PUBLIC PROSECUTOR

v.

OOI SIM YIM

HIGH COURT MALAYA, KUALA LUMPUR
FAIZA THAMBY CHIK JC
[FT CRIMINAL TRIAL NO. 14 OF 1984]
28 FEBRUARY 1989

CRIMINAL PROCEDURE: *Unlawful possession of firearms and ammunition - Plea of guilty - Sentencing principles - Mitigating factors - Public must be protected.*

The accused pleaded guilty to two amended charges: one alleging unlawful possession of a Smith & Wesson .38 Special revolver contrary to s. 8 of Firearms (Increased Penalties) Act 1971, and the other alleging possession of 47 rounds of .38 ammunition contrary to s. 33 Arms Act 1960.

Counsel for the accused submitted a number of mitigating factors while the learned DPP stated that this was a grave and serious offence.

Held:

[1] Mitigating factors in a criminal trial are normally co-operation with the police; remorse shown as evidenced by a guilty plea; and being a first offender.

[2] Today there have been too many cases of robbery being committed with the use of firearms. The public must be protected and it will not be likely protected if the Court passes only lenient sentences.

[3] Accused sentenced to a term of ten years' imprisonment and six strokes for the first charge and three years imprisonment for the second charge. Both terms of imprisonment are to run consecutively from and be back-dated to the date of his arrest.

Cases referred to:

PP v. Chung Kwong Huah [1981] 1 MLJ 316
Teh Ah Cheng [1976] 2 MLJ 186
Lee Chow Meng v. PP [1976] 1 MLJ 287
Reg. v. Blake [1962] 2 QB 377

Legislation referred to:

Arms Act 1960, s. 33
Firearms (Increased Penalties) Act 1971, s. 8

For the public prosecutor - Gooi Soon Seng, DPP
For the accused - Manjeet Singh Dhillon; M/s. Lawrence Dhillon & Associates

JUDGMENT

Faiza Thamby Chik JC:

The accused, Ooi Sim Yim, pleaded guilty to two amended charges; one alleging unlawful possession of a Smith & Wesson .38 Special revolver contrary to s. 8 of Firearms (Increased Penalties) Act 1971, and other alleging possession of 47 rounds of .38 ammunition in circumstances which raised a reasonable presumption that the ammunition is likely to be used for any unlawful purpose contrary to s. 33 Arms Act 1960.

Mr. Manjeet Singh in plea in mitigation had said all that could be said for the accused. He submitted that the accused:

(1) is a 37-year old bachelor coming from a large family of nine brothers;

(2) was gainfully employed as a carpenter prior to his arrest;

(3) is a first offender;

(4) had pleaded guilty; and

(5) had informed inspector Henry Tan that there was a clutch bag under the front passenger seat containing more rounds of ammunition.

Mr. Manjeet Singh Dhillon also urged the Court to pass a concurrent sentence to the two amended charges starting from the date of arrest.

The learned DPP, Mr. Gooi Soon Seng, urged the Court that under s. 8 of the Firearms (Increased Penalties) Act 1971 the accused should be punished with imprisonment for a term which may extend to fourteen years and with a mandatory whipping with not less than six strokes. He also stated that this is a grave and serious offence.

Mitigating factors in a criminal trial are normally co-operation with the police; remorse shown as evidence by a guilty plea; and being a first offender.

Today there have been too many cases of robbery being committed with the use of firearms. Defenceless men and women including tourists had become victims of robberies, and sometimes police officers and security guards have been shot at freely and some were injured and killed as a result of these attacks by robbers who were armed.

As Chan J said in *PP v. Chung Kwong Huah* [1981] 1 MLJ 316: When the Courts know that the unlawful possession and use of firearms are prevalent, then the time has come for the Courts to show their disapproval by acknowledging that offences of this kind are grave and serious crimes, and that those who indulge in them must expect a severe sentence.

Abdoolcader J (as he then was) in *Teh Ah Cheng* [1976] 2 MLJ 186 said:

> ... (it) must be made abundantly clear that in the light of the appalling increase in crimes involving violence and the unlawful possession and use of lethal weapons, society is crying out 'enough is enough' and is no longer in any mood to tolerate such offenders.

In *Lee Chow Meng v. PP* [1976] 1 MLJ 287, Abdul Hamid J (as he then was) held:

(1) the Court is entitled to take judicial notice of the fact of the prevalence of the commission of offences involving firearms in Kuala Lumpur;

(2) In the circumstances of this case, the learned President was justified in ordering the sentences of imprisonment to run consecutively.

The public must be protected and it will not be likely protected if the Court passes only lenient sentences.

As Hilbery J in *Reg. v. Blake* [1962] 2 QB 377 said:

> It is of the highest importance, perhaps particularly at the present time, that such conduct should not only stand condemned, should not only be held in utter abhorrence by all ordinary men and women but should receive, when brought to justice, the severest possible punishment. This sentence had a threefold purpose. It was intended to be punitive, it was designed and calculated to deter others, and it was meant to be a safeguard to this country.

I agree with those views and I am sure all ordinary men and women in this country also agree with those views. I am of the opinion they apply in this case.

Accordingly, I sentence the accused to a term of ten years' imprisonment and six strokes for the first charge, and three years' imprisonment for the second charge. Both terms of imprisonment are to run consecutively, the first term of imprisonment is to run from and be back-dated to the date of his arrest, and the second term of imprisonment is to run from the expiry of the first term of imprisonment.

Also found at [1989] 1 CLJ 979